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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE OF M.P. AT JABALPUR .

Criminal Appeal No 2929 of 1998 .

MUNIYA @ (Bhagwati)
D/o- Kaishabji Lodhi.
aged about 30 years,
R/o- Vill- Chotwani,
P/s- Dhamda,
Distt- Durg. M.P.

APPELLANT
(in Jail)

Versus

The State of M.P.

Respondent

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE 1973 .

Advocate

D. A. D.

STAMPED

आदेश पत्रक

मामला क्रमांक (C.A.No. 2929/98) सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH</u> <u>HON'BLE MR. L.C. BHADOO &</u> <u>HON'BLE MR. V.K. SHRIVASTAVA, JJ.</u> <u>3-10-2006</u> Smt. Uma Tiwari, counsel for the appellant. Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent. Oral judgment dictated on <i>Dais</i>. <u>PER L.C. BHADOO, J.</u> This appeal is directed against the judgment of conviction and order of sentence dated 9-7-98 passed by the 2nd Additional Sessions Judge, Durg, in S.T. No.265/96 whereby learned Additional Sessions Judge after convicting the accused for commission of offence under Section 302 of the I.P.C. sentenced her to undergo imprisonment for life. Case of the prosecution, in brief, is that on 19-3-96 at about 9.15 a.m. accused/appellant Muniya gave bread (Roti) to 4 children namely, Anil Puri (since deceased), Ishwari, Tarani and Pitambar. After eating the bread, Anil Puri became unconscious whereas, on eating bread (Roti) other 3 children found the same to be sore, therefore, they did not eat whole bread. However, all the four children were admitted in the Dhamdha hospital and on the same day the doctor sent communication (Ex.-P/5) to the Police Station	

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	Dhamdha to the effect that here 4 child admitted complaining the history of vomiting, frothing from mouth since this morning. One child is brought dead. Condition of 3 child alive. Please come and do the needful.' One merg intimation Ex.-P/6 was written and other 3 children namely Tarani, Pitambar and Ishwari, who were unconscious, were medically examined. The postmortem of Anil Puri was conducted in which no definite opinion regarding the cause of death was given. However, viscera were preserved. On 22nd March 1996 when Tarani and Ishwari regained consciousness and after obtaining the report from the doctor, their statements were recorded by the Executive Magistrate in which they disclosed that when they were playing, Muniya came, gave them bread, on account of eating of that bread they became unconscious. On enquiry, it was found that Muniya gave some poisonous substance to the children, as a result of which Anil Puri died. Based on this report, F.I.R. Ex.-P/12 was registered by the Station House Officer, Police Station Dhamdha for commission of offence under Sections 302 and 328 of the I.P.C. The Investigating Officer after giving notice Ex.-P/7 to the Panchas, prepared inquest report (Ex.-P/8) of the body of Anil Puri. The postmortem on the dead body of the deceased was conducted by Dr. D.K. Gupta, Assistant Surgeon, Primary Health Centre, Dhamdha. He prepared the postmortem report Ex.-P/2. The Investigating Officer prepared site plan (Ex.-P/13) of the place of occurrence. The viscera preserved by the doctor were sent for chemical examination	

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	to the Forensic Science Laboratory, Sagar under Ex.-P/14 from where report dated 28-2-97 was received in which chemical examiner opined that Aluminium Phosphaide (Sulphas) was found in the pieces of heart, liver, lungs, kidney, spleen, and pieces of stomach & pieces of small intestine. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned 2nd Additional Session Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused examined 10 witnesses. Learned Additional Sessions Judge recorded the statement of accused under Section 313 of the Cr.P.C. in which she denied the material appearing against her in the prosecution evidence and stated that she is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused and perusal of the record convicted and sentenced the accused as mentioned in earlier part of this judgment. We have heard learned counsel for the parties. Learned counsel for the accused/appellant argued that the whole case rests on the circumstantial evidence and the prosecution has not been able to establish that the poison was in possession of the accused. Learned counsel for the appellant further argued that	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	no motive has been established by the prosecution for administering poison to the children. On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court. Having heard learned counsel for the parties, we have perused the record. In order to rest conviction in a poison case, the Hon'ble Apex Court in the matter of Anant Chintaman Lagu V. The State of Bombay reported in AIR 1960 Supreme Court 500 held that the prosecution must establish in a case of poisoning: (a) that death took place by poisoning; (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased. The Hon'ble Apex Court further held that these three propositions must be kept in mind always, the sufficiency of the evidence direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison	

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XI-HC-22

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	must have been administered by the accused person, then the conviction can be rested on it. In the light of above principle enunciated by the Apex Court, if we examine the evidence available on record, as far as the point that as to whether the death of Anil Puri was caused on account of administration of poison is concerned, PW-4 Ishwari, who was playing with deceased Anil Puri, has stated that on the fateful day he along with Golu, Tarni and Raju (Anil Puri) were playing, at that time, the accused came and she gave them bread. When he ate the bread, he found the bread to be sore, therefore, he threw the bread and he left for the house. Thereafter, he started vomiting and feeling giddiness. Thereafter, he was taken to the Dhamdha hospital where Raju (Anil Puri) died. Similar is the evidence of PW-5 Tarni who was also playing with the deceased. She has stated that deceased Anil Puri was her brother and she knows Muniya Bai. She gave bread (Roti) which was eaten by Pitambar and Ishwari. On eating, she found the bread to be sore and she started feeling giddiness, on which she took water and she also gave water to Pitambar. Anil after taking bread went towards Dai Para and he died on the same day. She was taken to the Dhamdha hospital. In cross-examination, she has stated that Muniya gave bread in front of the door of the house. She has further stated that when all four were playing, Muniya gave pieces of bread to all of them. In cross-examination of these two witnesses the defence has not been able to elicit that their	

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	evidence regarding giving bread to all the four children suffers from any infirmity. These witnesses are children of 6-7 years of age and there was no occasion for them to give false evidence in order to implicate the accused/appellant in a false case. Therefore, their evidence inspire full confidence of the Court that on the fateful day Muniya Bai gave pieces of bread to all the 4 children one among them was deceased Anil Puri. Therefore, from this evidence, it is established that Muniya Bai was in possession of poison which was mixed with bread. Equally from this evidence it is also established that Muniya Bai had an opportunity to administer the poison to these children. Apart from that, Dr. D.K. Gupta (PW-8) has stated that on 19-3-96 he was in the Primary Health Centre, Dhamdha. He conducted postmortem on the dead body of the deceased on the request of police station. On examination, he found that pupil of eye was dilated, nails became bluish, whole body became pale, there was no injury present on the body of the deceased, brain was congested, both the lungs and heart were congested, liver and kidney were also congested. He was unable to give opinion regarding cause of death. Therefore, viscera were preserved for chemical examination. His report is Ex.-P/2. PW-10 Suresh Tiwari, S.H.O., Dhamdha has stated that viscera were sent for chemical examination to the Forensic Science Laboratory under Ex.-P/14 and receipt of the same is Ex.-P/15. Report of the viscera, as mentioned in earlier part of this judgment, is to the effect that on chemical	

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for the Attorney

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	examination, in the pieces of heart, liver, lungs, kidney, spleen, stomach, small intestine Aluminium Phosphaide (Sulphas) was found. Therefore, from the above evidence that Muniya Bai gave pieces of bread containing poison to the children one among them was the deceased who ate the pieces of bread, he became unconscious and before he was taken to the hospital, he was already dead. Two witnesses have stated that after eating the pieces of bread, they felt giddiness, became unconscious and they were taken to the hospital. Thereafter, viscera of the deceased were preserved by Dr. D.K. Gupta (PW-8) and in those viscera Aluminium Phosphaide (Sulphas) was found as per the chemical examiner report. Therefore, in view of the above evidence, all the three ingredients stands satisfied i.e. the deceased died on account of consumption of poison i.e. Aluminium Phosphaide (Sulphas); the accused had an opportunity to administer the said poisonous substance; and the accused was in possession of poison mixed with bread. As far as argument advanced by learned counsel for the accused/appellant that the prosecution has not been able to establish motive behind the crime is concerned, it is true that in a case based on the circumstantial evidence if the motive is established then that is a strong circumstance for convicting the accused based on that. But at the same time, it is settled law that	

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for the PROSECUTION.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	the motive is always hidden in the mind of the accused and it is difficult to know motive of the accused that what was prevailing in the mind of the accused at the time of commission of crime which prompted him/her to commit crime. Merely, if the motive is not proved and other satisfactory circumstantial evidence is available on record, conviction can be based on that. In the present case, there is clear, cogent, and reliable evidence that the accused was only person who administered poison to the deceased. Therefore, the prosecution based on the above evidence has been able to establish the case against the accused. In the result, we do not find any illegality or infirmity in the judgment of the trial Court, as such, the appeal being devoid of merit, fails and same is dismissed.	
Barve	Sd/- L.C.BHADOO Judge	Sd/- V.K.Shrivastava Judge

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9.10.06

for the Advocate.